

Mao Declaration

Exhibit 88

Byatt Deposition Transcript

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE TRUJILLO,
7 individually and on behalf of
8 all other similarly situated

9 Plaintiffs,

CASE NO.

5:20-CV-03664-LHK-SVK

VS.

10 GOOGLE LLC

11 Defendant.

12 ZOOM VIDEOTAPED DEPOSITION OF WILLIAM BYATT

December 20, 2021

13 11:04 a.m. EST

14
15
16 TAKEN BY:

17 VIOLA TREBICKA, ESQ.

ATTORNEY FOR DEFENDANT

18
19 REPORTED BY:

20 BELLE VIVIENNE, CRR

CERTIFIED STENOGRAPHIC

21 REALTIME COURT REPORTER

VERITEXT LEGAL SOLUTIONS

22 JOB NO. 5001125

866 299-5127

1 if you don't understand something, just 11:07:46
2 let me know. I will be asking you 11:07:47
3 questions. Your counsel, who is in the 11:07:49
4 room with you -- well, let me take a step 11:07:52
5 back and say, you are represented today, 11:07:55
6 correct? 11:07:58
7 A. Yes. 11:07:58
8 Q. And Mr. Lee is your counsel? 11:07:58
9 A. Yes. 11:08:01
10 Q. If -- one -- while I am asking 11:08:01
11 you questions, there may be a moment in 11:08:03
12 which Mr. Lee may object to my question. 11:08:07
13 Unless Mr. Lee instructs you not to 11:08:11
14 answer, you will answer my question to the 11:08:14
15 best of your ability. Do you understand 11:08:16
16 that? 11:08:18
17 A. I do, yeah. 11:08:19
18 Q. And you also under -- you also 11:08:20
19 understand that you are under oath today, 11:08:22
20 correct? 11:08:24
21 A. I do. 11:08:24
22 Q. Great. So, Mr. Byatt, what do 11:08:25
23 you understand by the term "private 11:08:29
24 browsing"? 11:08:30
25 A. I understand that to mean that 11:08:32

1 my behavior and activity while I am 11:08:35
2 browsing the Internet or using, you know, 11:08:40
3 web software, won't be shared with anyone 11:08:44
4 that I don't want it shared with. It will 11:08:48
5 be private to me. 11:08:50

6 Q. So -- so your understanding of 11:08:56
7 private browsing is that it won't be 11:08:59
8 shared with anyone that you don't want it 11:09:02
9 shared with, correct? 11:09:04

10 MR. LEE: Objection to form. 11:09:06

11 A. Yes, that -- that is my 11:09:09
12 understanding. That I have control over 11:09:11
13 who it's shared with and -- and that -- 11:09:14
14 that -- yeah, that -- that it's limited to 11:09:18
15 who I sort of affirm that it's going to -- 11:09:20
16 to be shared with, yeah. 11:09:24

17 BY MS. TREBICKA: 11:09:24

18 Q. And what's your understanding of 11:09:24
19 how you affirm this consent to share your 11:09:25
20 information? 11:09:30

21 A. I think that I -- pardon me -- 11:09:33
22 agree to share information when I accept 11:09:39
23 various terms of service or privacy 11:09:47
24 policies. I think that in the case of -- 11:09:50
25 I mean, I do most of my browsing on 11:09:55

1 information being shared. 11:20:50

2 Q. How -- what steps do you take to 11:20:55

3 know that certain information is -- about 11:20:58

4 you is being shared when you browse? 11:21:00

5 A. I -- as a -- as a rule, I tend 11:21:03

6 to read, you know, privacy policies, terms 11:21:06

7 of service, things like that. I -- I 11:21:10

8 actually think about when -- when a 11:21:14

9 website asks me what they can track or 11:21:17

10 what they're going to put on my computer, 11:21:20

11 I do think about what was, you know, 11:21:24

12 default to hitting okay all the time. 11:21:27

13 So -- so yeah, I think it's -- 11:21:30

14 it's -- you know, that sort of thing, 11:21:33

15 paying attention to what is being 11:21:34

16 represented to me as being shared and 11:21:36

17 thinking about whether or not I want that 11:21:38

18 shared. 11:21:40

19 Q. And do you -- would you agree 11:21:49

20 that you take careful precautions to 11:21:50

21 protect your privacy online? 11:21:53

22 A. I wouldn't use the word 11:21:55

23 "careful" or -- I'm not even sure I would 11:21:56

24 use the word necessarily "precautions." I 11:22:01

25 would say that I am aware of and -- and 11:22:03

1	cognizant of what I am consenting to	11:22:06
2	share, yeah.	11:22:09
3	Q. When you browse the web, are you	11:22:11
4	generally aware that websites display ads?	11:22:32
5	A. Yes, certainly.	11:22:37
6	Q. You've seen those ads, right?	11:22:38
7	A. Yeah. I've definitely seen ads,	11:22:40
8	yeah.	11:22:42
9	Q. Do you ever click on the ads?	11:22:43
10	A. I do.	11:22:45
11	Q. Do you get some value out of	11:22:46
12	clicking out of some ads?	11:22:48
13	A. I do, yeah.	11:22:50
14	Q. What's the value that you get?	11:22:51
15	Tell me about it.	11:22:53
16	A. I -- I enjoy getting new	11:22:55
17	products and services that I maybe hadn't	11:23:02
18	been aware of. I think finding, you know,	11:23:04
19	new brands or new information or new	11:23:08
20	content that -- that appeals to me is	11:23:12
21	nice.	11:23:14
22	Q. What else do you like about	11:23:14
23	seeing those ads?	11:23:16
24	A. I don't know. That -- sometimes	11:23:22
25	the ads are for sales. I like sales.	11:23:25

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1 entities that you just don't want to have 11:41:59
2 your information for one reason or 11:42:01
3 another? 11:42:04
4 A. Yeah, Breitbart. 11:42:04
5 Q. Any others that come to mind? 11:42:06
6 A. That I -- that I just outright 11:42:09
7 don't want to have my information at all? 11:42:11
8 The Taliban, I don't want them to know 11:42:19
9 anything about me, but for the thrust of 11:42:21
10 the question, no, not particularly that I 11:42:24
11 can think of. 11:42:26
12 Q. What -- how do you feel about 11:42:27
13 Google having your information related to 11:42:30
14 your browsing? 11:42:33
15 A. In general, having information 11:42:34
16 related to my browsing, I generally like, 11:42:36
17 right? Like, I think that, in general, 11:42:41
18 it's able to, you know, improve my 11:42:44
19 browsing experience, certainly, when I 11:42:47
20 consent to it. But I don't necessarily 11:42:51
21 want them to have all of my information 11:42:53
22 all of the time. 11:42:56
23 Q. You said you don't want them to 11:42:58
24 have all of your information all of the 11:43:09
25 time, and I'd like to ask you a couple of 11:43:11

1 Q. What is your understanding of 12:16:29
2 Google's promise to you when you browse in 12:16:31
3 Incognito? 12:16:34

4 A. I certainly can't remember it 12:16:36
5 word for word. It is what's in sort of 12:16:38
6 the combination of the terms of service, 12:16:42
7 the privacy policy and the Incognito 12:16:45
8 splash screen. In general, my expectation 12:16:48
9 is that Google is not collecting the 12:16:54
10 information about my behavior when I am in 12:16:58
11 Incognito mode. 12:17:04

12 Q. Are you drawing a difference 12:17:08
13 between collecting and receiving the 12:17:09
14 information in Incognito mode in your 12:17:13
15 answer? 12:17:15

16 A. Am I drawing a difference 12:17:17
17 between collecting and receiving? I don't 12:17:19
18 think so, not at the moment, not yet. I 12:17:28
19 reserve the right to draw a distinction. 12:17:34

20 Q. So you understand Google's 12:17:43
21 promise when you browse in Incognito to be 12:17:45
22 that it would not receive any information 12:17:48
23 about your browsing behavior; is that 12:17:56
24 right? 12:17:59

25 A. Correct, yes. 12:18:02

1 Q. And that includes when you go to 12:18:03
2 a Google owned and operated website like 12:18:06
3 Google Search, correct? 12:18:09

4 A. Yes. Privacy policies 12:18:14
5 specific -- I think the privacy policy 12:18:18
6 would be the terms of service specifically 12:18:20
7 say that I have control over what 12:18:23
8 information is shared with Google across 12:18:25
9 their services. So I would understand 12:18:27
10 search to be one of those services. 12:18:31

11 Q. If you could go back to the 12:18:33
12 Exhibit 2 that we marked. 12:18:50

13 A. I am there. 12:18:53

14 Q. Okay. If you go to, I believe 12:18:54
15 it's -- page is 5. 12:18:57

16 A. I am on page 5. 12:19:01

17 Q. Okay. 12:19:04

18 A. Yes, I'm on page 5. 12:19:05

19 Q. Let us go to page 6. 12:19:07

20 A. I am now on page 6. 12:19:09

21 Q. All right. You see bullet -- or 12:19:10
22 you see point 2, what do we do with the 12:19:13
23 information we collect about you? 12:19:17

24 A. Yes, I do. 12:19:19

25 Q. And being a privacy conscious 12:19:20

1 Incognito mode is inconsistent with your 12:31:10
2 understanding of Google's disclosures 12:31:16
3 related to Incognito mode? 12:31:18

4 A. That's -- I don't think I could 12:31:20
5 nail down something like that 12:31:23
6 specifically. 12:31:25

7 MR. LEE: And I'd also caution 12:31:27
8 Mr. Byatt, he's doing a great job but 12:31:30
9 to the extent any answer would reveal 12:31:33
10 any attorney-client communications, 12:31:35
11 I'd advise him -- direct him not to 12:31:38
12 answer. 12:31:40

13 BY MS. TREBICKA: 12:31:40

14 Q. And I'm not interested in any of 12:31:41
15 your communications with counsel. I would 12:31:42
16 not -- I would like you to not go into 12:31:44
17 those communications. 12:31:47

18 I'm just trying to understand 12:31:49
19 when you formed this opinion that 12:31:50
20 Incognito mode is inconsistent with your 12:31:54
21 understanding of Google's disclosures 12:31:56
22 related to Incognito mode. Was it before 12:31:58
23 the lawsuit was filed? 12:32:00

24 A. Yes, it would be before the 12:32:09
25 lawsuit was filed, yes. 12:32:10

1 Q. Was it months or years before 12:32:13
2 the lawsuit was filed? 12:32:15
3 A. Months or less. 12:32:19
4 Q. And when you found out that 12:32:28
5 Google -- actually, let me tell you, how 12:32:31
6 did you find out that Google in your 12:32:33
7 understanding was acting inconsistently 12:32:36
8 with your understanding of Google's 12:32:39
9 disclosures related to Incognito mode? 12:32:41
10 MR. LEE: And I -- I caution you 12:32:46
11 again, Mr. Byatt, that this question, 12:32:47
12 you can answer only to the extent you 12:32:48
13 can answer it without revealing 12:32:50
14 attorney-client communications. 12:32:52
15 A. Yeah. And I'm not sure how to 12:32:53
16 answer that without doing that. 12:32:57
17 MS. TREBICKA: Let us mark as 12:33:45
18 Exhibit 4, the Twitter privacy policy. 12:33:46
19 (Exhibit 4, Twitter Privacy 12:33:51
20 Policy, marked for identification.) 12:33:58
21 MS. TREBICKA: Tracy, that's 12:33:58
22 tab 13. 12:34:00
23 MR. LEE: While we wait for that 12:34:13
24 to load on our side, Counsel, is there 12:34:15
25 a date of the privacy policy, please? 12:34:17

1 reviewed and accepted the terms of 13:58:27
2 service, correct? 13:58:31
3 A. Yes. 13:58:31
4 Q. And from the face of this 13:58:32
5 document, the very first -- first page, it 13:58:35
6 says "This is an archived version of our 13:58:42
7 terms of service"; do you see that? 13:58:45
8 A. I do, yes. 13:58:46
9 Q. And this is what you were 13:58:47
10 referring to; is that right, that it's not 13:58:48
11 the current version? 13:58:51
12 A. I would imagine it's not the 13:58:56
13 current version. Yeah, I -- I'm not 13:58:58
14 looking at the current version to be able 13:58:59
15 to say. 13:59:01
16 Q. And if our records show that or 13:59:01
17 establish that it was effective from 13:59:04
18 April 2007 to February 2012, would you 13:59:06
19 have any reason to dispute that? 13:59:09
20 A. I would not. 13:59:11
21 Q. I'd like to know which portions 13:59:12
22 of this document you reviewed. So feel 13:59:20
23 free to scroll through it and if you -- if 13:59:23
24 something looks familiar or you know that 13:59:28
25 you reviewed it, can you please let me 13:59:30

1 to the words of this document. If it 14:01:40
2 encompasses a hyperlink, then 14:01:44
3 Mr. Byatt can say that, but I would 14:01:46
4 like Mr. Byatt to start reviewing the 14:01:49
5 document so he can answer my question. 14:01:53

6 MR. LEE: Got it. We're just 14:01:53
7 trying -- you asked the question 14:01:55
8 before he read it, so I just wanted to 14:01:57
9 make sure we're all on the same page 14:01:57
10 for that question. Thank you. 14:02:01

11 A. I have reviewed this document 14:02:02
12 here, and I believe that I -- I have 14:03:38
13 reviewed this entire document before. In 14:03:47
14 particular, section 7, I remember pretty 14:03:50
15 clearly, which is about the privacy and 14:03:55
16 personal information, but I believe I 14:04:00
17 would have reviewed the whole document in 14:04:03
18 the past. 14:04:04

19 BY MS. TREBICKA: 14:04:04

20 Q. Do you recall following the 14:04:14
21 hyperlink that is in section 7.1? 14:04:16

22 A. I cannot say if I clicked this 14:04:22
23 link in this document when I reviewed this 14:04:27
24 document. I can certainly say that I 14:04:30
25 have, at various points, reviewed Google's 14:04:33

1 privacy policy, which is what Google says 14:04:37
2 is at that link. 14:04:39

3 Q. And your -- your testimony is 14:04:41
4 that you reviewed Google's privacy policy 14:04:46
5 multiple times, not just once, right? 14:04:49

6 A. That's correct. 14:04:51

7 Q. Where in this document does it 14:04:52
8 say that Google will not receive any data 14:05:04
9 when you browse in private browsing mode 14:05:08
10 or Incognito mode? 14:05:13

11 A. 7.2, you agreed to the use of 14:05:15
12 your data in accordance with Google's 14:05:17
13 privacy policies led me to believe that 14:05:19
14 the information on Google's privacy 14:05:22
15 policies was what I had to understand. 14:05:24
16 Google's privacy policies told me that I 14:05:27
17 can control what data was going to be 14:05:29
18 used -- that I could control that by using 14:05:33
19 Chrome's Incognito mode and I think that 14:05:38
20 when I opened Incognito mode that would 14:05:41
21 have -- that -- that splash screen was 14:05:45
22 like a new and distinct notice to me as 14:05:49
23 well about what Google was going to do 14:05:52
24 with the information, and I was using 14:05:54
25 Incognito with the agreement of that 14:05:56

1 notice. 14:05:57

2 Q. Anything else in this document 14:05:58

3 for now that would have led you to believe 14:06:00

4 that Google would not receive your 14:06:05

5 information if you were browsing in 14:06:08

6 Incognito mode? 14:06:11

7 A. Perhaps. You know, I -- I have 14:06:13

8 read and reviewed the whole document right 14:06:15

9 now, but, you know, quickly. I haven't 14:06:16

10 taken notes. So I can't rule out 14:06:23

11 something else in here making me think 14:06:26

12 that that would be the part that's 14:06:29

13 standing out to me now as making me think 14:06:31

14 that. 14:06:35

15 Q. Well, take your time, Mr. Byatt. 14:06:35

16 I'd like you to review it. 14:06:38

17 A. I think this is as good as we're 14:06:39

18 going to get. This is the section that is 14:06:41

19 certainly the -- the -- the most relevant 14:06:43

20 to me. I -- I just can't speak to what 14:06:46

21 other lines would have made me think 13 14:06:52

22 years ago. 14:06:55

23 MS. TREBICKA: Let's mark as 14:07:04

24 Exhibit 7 the Google privacy policy, 14:07:05

25 tab 40, Tracy. 14:07:17

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1 (Exhibit 7, Google Privacy 14:07:20
2 Policy, marked for identification.) 14:07:38
3 A. I have Exhibit 7 open. 14:07:38
4 BY MS. TREBICKA: 14:07:38
5 Q. This is -- I'll represent to you 14:07:44
6 that this is the Google privacy policy 14:07:46
7 that's been effective since May 25, 2019. 14:07:48
8 Do you see that? 14:07:52
9 A. I do see that. 14:07:53
10 Q. Have you reviewed this privacy 14:07:54
11 policy or a privacy policy that looks 14:08:14
12 generally like this? 14:08:16
13 A. Yes. 14:08:18
14 Q. And feel free to review the 14:08:26
15 document, but I'd like you -- I'd like to 14:08:29
16 know which parts of this document you have 14:08:32
17 reviewed over the years? You mentioned 14:08:35
18 you reviewed privacy policy multiple 14:08:38
19 times, but I'd like you to generally tell 14:08:40
20 me which parts you reviewed. 14:08:42
21 A. I am reading it now. 14:08:45
22 Q. And for the record, this is the 14:08:52
23 version of the privacy policy that was 14:08:55
24 effective from May 28, 2018 to January 21, 14:08:58
25 2019. 14:09:05

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1	A. This is a very long document.	14:09:38
2	MR. LEE: Take your time.	14:09:40
3	BY MS. TREBICKA:	14:09:40
4	Q. And, Mr. Byatt, not to disturb	14:09:57
5	you in your reading, but so that you have	14:09:59
6	the questions that I'm going to ask you in	14:10:02
7	mind, the first one is which parts you	14:10:04
8	generally recall reviewing, and the other	14:10:06
9	question, which parts led you to believe	14:10:08
10	that browsing in private browsing mode or	14:10:11
11	Chrome Incognito would mean that Google	14:10:14
12	would not collect or receive your browsing	14:10:17
13	information?	14:10:21
14	A. Thank you for the reminder. I	14:10:24
15	have reviewed this document now. With	14:13:49
16	regards to the question of what I may have	14:13:53
17	reviewed in the past, I have certainly	14:13:55
18	reviewed the entire privacy policy at	14:13:59
19	times in the past. I cannot say for	14:14:04
20	certain that I reviewed the entirety of	14:14:06
21	this document in this window from	14:14:11
22	May 25, 2018 to, I believe, you said	14:14:14
23	sometime in 2019.	14:14:17
24	I can say, of the parts I	14:14:19
25	remember, that roughly the first page,	14:14:23

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1 certainly the first section -- yeah. So 14:14:26
2 basically the first page, up to the 14:14:32
3 information Google collects part is very 14:14:34
4 familiar. This certainly looks like 14:14:39
5 something I have reviewed. I remember 14:14:41
6 reviewing language very similar to this, 14:14:44
7 substantively similar. So I think that's 14:14:47
8 what I can offer in terms of what I 14:14:50
9 remember reviewing. 14:14:53

10 For what has led me to believe 14:14:55
11 that Incognito would do what it says on 14:14:59
12 the tin and not collect my information, it 14:15:04
13 would be in, let's see -- so the second 14:15:09
14 sentence of the first paragraph "We 14:15:14
15 understand this is a big responsibility 14:15:17
16 and work hard to protect your information 14:15:18
17 and put you in control." That sentence 14:15:20
18 led me to believe that I was in control of 14:15:23
19 my data being shared. 14:15:25

20 And then there is a sentence in 14:15:27
21 the, one, two, three, four -- well, the -- 14:15:33
22 the paragraph just underneath the bullet 14:15:37
23 points "You can use our services in a 14:15:40
24 variety of ways to manage your privacy." 14:15:41
25 And then the last two sentences of that, 14:15:45

1 "You can also choose to browse the web 14:15:47
2 privately using Chrome in Incognito mode. 14:15:50
3 And across our services, you can adjust 14:15:52
4 your privacy settings to control what we 14:15:55
5 collect and how your information is used." 14:15:57

6 Let's see, yeah. And I 14:16:01
7 understood this section here "You can 14:16:11
8 choose" -- "You can also choose to browse 14:16:13
9 the web privately using Chrome in 14:16:31
10 Incognito mode." I understood that 14:16:34
11 section to apply to the bulleted list just 14:16:37
12 above it "Google apps, sites, devices," 14:16:44
13 platforms, "products that are integrated 14:16:51
14 into third-party apps and sites like ads." 14:16:53

15 Yeah. So I would say, in a 14:16:55
16 broad sense, but it is that whole first 14:16:58
17 page that has led me to believe that 14:17:01
18 Incognito does what Incognito says it 14:17:03
19 does. And in particular, this sentence 14:17:08
20 "You can also choose to browse the web 14:17:09
21 privately using Chrome in Incognito mode." 14:17:12

22 Q. Right underneath it, it says 14:17:14
23 Information Google Collects; do you see 14:17:16
24 that? 14:17:17

25 A. I do, yes. 14:17:18

1 Q. Did you review that section? 14:17:20

2 A. I can not say with certainty 14:17:22

3 whether I reviewed it during this 2018 to 14:17:25

4 2019 window that this document was in 14:17:29

5 place. I have reviewed that for Google 14:17:31

6 privacy policies in the past. 14:17:36

7 Q. And if you'll scroll down to the 14:17:37

8 second page, it says in bold, in a bold 14:17:40

9 heading "Information we collect as you use 14:17:44

10 our services"; do you see that? 14:17:47

11 A. I do, yes. 14:17:48

12 Q. Do you recall reviewing this 14:17:49

13 section, either in this particular version 14:17:53

14 or any other version of the Google privacy 14:17:56

15 notice -- privacy policy? 14:18:00

16 A. Same answer as previous. I 14:18:02

17 can't say with certainty whether I 14:18:04

18 reviewed it or this particular version of 14:18:06

19 the document, but I have definitely 14:18:10

20 reviewed something substantively similar. 14:18:13

21 Q. The second paragraph of that 14:18:16

22 section under "Your apps, browsers & 14:18:20

23 devices," says "The information we collect 14:18:23

24 includes unique identifiers, browser type 14:18:27

25 and settings, device type and settings, 14:18:32

1 operating system, mobile network 14:18:35
2 information including carrier name and 14:18:37
3 phone number and application version 14:18:41
4 number. We also collect information about 14:18:43
5 the interaction of your apps, browsers and 14:18:46
6 devices with our services, including IP 14:18:49
7 address, crash reports, system activity 14:18:53
8 and the date, time and refer URL of your 14:18:56
9 request"; do you see that? 14:19:02

10 A. I do see that and I took the 14:19:03
11 section in the second sentence of the 14:19:06
12 whole document that says that I'm in 14:19:08
13 control, as to mean that I'm in control of 14:19:11
14 when and how that is shared. And I took 14:19:13
15 the sentence saying that I can choose to 14:19:16
16 browse the web privately using Chrome in 14:19:19
17 Incognito mode to mean that using Chrome 14:19:22
18 in Incognito mode would limit the way that 14:19:23
19 that information is shared. 14:19:25

20 Q. Limited how? 14:19:28

21 A. Make it not be shared with 14:19:30
22 Google. 14:19:31

23 Q. And where does it say that it 14:19:32
24 will not be shared with Google? 14:19:37

25 A. Where it says that I can browse 14:19:39

1 information they collect. So the way I 14:24:57
2 understand what Google is saying when they 14:25:01
3 say I can browse privately is that I can 14:25:03
4 stop sharing this information. 14:25:07

5 Q. And where does it say in this 14:25:09
6 document or in the first page that this 14:25:11
7 information would -- that you would stop 14:25:15
8 sharing this information? 14:25:17

9 A. It says I can choose to browse 14:25:19
10 the web privately using Chrome in 14:25:21
11 Incognito mode, and it says that I am in 14:25:23
12 control of how the information is shared. 14:25:27

13 Q. Those two sentences led you to 14:25:30
14 believe that browsing in Incognito mode 14:25:32
15 would mean that none of your information 14:25:36
16 would be received by Google, correct? 14:25:39

17 A. That in conjunction with the 14:25:41
18 Incognito splash screen, yes. 14:25:43

19 Q. Let us go to the splash screen 14:25:45
20 then, since we've been talking a lot about 14:26:10
21 it. 14:26:13

22 MS. TREBICKA: And this is a 14:26:13
23 document that I will mark as 14:26:16
24 Exhibit 8. 14:26:23

25 Tab 5, Tracy. 14:26:30

1 (Exhibit 8, Screenshot of 14:26:32
2 Chrome's You've Gone Incognito pop-up 14:26:32
3 screen from 08/20/2020, marked for 14:26:32
4 identification.) 14:26:32
5 BY MS. TREBICKA: 14:26:32
6 Q. You will see it in a few 14:26:37
7 seconds, but I'll represent to you that 14:26:38
8 it's a screenshot of Chrome's "You've gone 14:26:40
9 Incognito" pop-up screen of 14:26:43
10 August 20, 2020. 14:26:47
11 A. I have opened the document. Oh, 14:26:50
12 wow, this one has the opposite problem as 14:26:57
13 that last one. It is now too huge to see. 14:27:00
14 Give me a moment. 14:27:00
15 Okay. I can see the screenshot 14:27:04
16 of the Incognito screen. 14:27:06
17 Q. Is this the Incognito screenshot 14:27:12
18 or splash screen that you've been 14:27:15
19 referring to in your testimony? 14:27:17
20 A. Yes. I have -- well, sort of. 14:27:19
21 I have seen this. I believe that the 14:27:21
22 screen has changed, and there is another 14:27:26
23 slightly different one as well that -- and 14:27:30
24 I mean both of them. And if there are 14:27:32
25 other changes that I don't recall, I would 14:27:34

1 mean all of them. 14:27:36

2 Q. And are you referring to the 14:27:37

3 addition of the block third-party cookies 14:27:40

4 language on this Incognito splash screen? 14:27:45

5 A. That's the largest bit that I 14:27:49

6 would be referring to. I think some of 14:27:52

7 the other language may have changed 14:27:54

8 slightly. I can't speak to that 14:27:55

9 specifically. But yeah, that -- that's 14:27:58

10 part of it. 14:28:03

11 Q. This is what's also referred to 14:28:05

12 as the new tab page. In other words, when 14:28:07

13 you open a new Incognito web page, this is 14:28:11

14 the web page that you would see, correct? 14:28:13

15 A. Yes. 14:28:18

16 Q. Earlier, you testified that you 14:28:22

17 use Incognito, Chrome Incognito and that 14:28:25

18 sometimes you use it for a short period of 14:28:30

19 time, sometimes you use it for a more 14:28:32

20 extensive period of time; do you recall 14:28:33

21 that testimony? 14:28:35

22 A. I do, yes. 14:28:35

23 Q. Does it ever happen -- or let me 14:28:37

24 ask you this: How long, in terms of hours 14:28:40

25 or days, whatever it is, is the longest 14:28:43

1 the same session open for more than ten 14:29:38
2 days? 14:29:39
3 A. I have no idea. 14:29:40
4 Q. Could have, could not have, you 14:29:40
5 just don't know? 14:29:42
6 A. That's correct. 14:29:43
7 Q. What about more than 50 days? 14:29:43
8 A. Well, I think the first question 14:29:47
9 in this line was what's the longest you've 14:29:49
10 had it open and I didn't know the answer 14:29:51
11 to that. I'm not going to know the answer 14:29:54
12 to any particular time limit. I guess 14:29:56
13 more -- I definitely never had one open 14:30:01
14 for more than 14 years. You know, like, I 14:30:04
15 really don't know how long I've had one 14:30:07
16 open, and I can't say for any particular 14:30:09
17 length of time that is, you know, 14:30:11
18 physically possible. 14:30:13
19 Q. Do you have one open right now 14:30:15
20 in your computer at home? 14:30:17
21 A. I don't know. 14:30:26
22 Q. You may have, may not have, you 14:30:27
23 just don't recall? 14:30:29
24 A. That's correct. 14:30:30
25 Q. All right. So back to the 14:30:36

1 Incognito new tab page, which you have in 14:30:39
2 front of you as Exhibit 8, it says here 14:30:41
3 "Now you can browse privately, and other 14:30:44
4 people who use this device won't see your 14:30:47
5 activity." Do you see that? 14:30:50

6 A. I see both of those two clauses 14:30:53
7 that you just read, yes. 14:30:56

8 Q. Why do you say "both of those 14:30:56
9 two clauses"? What do you mean by that? 14:30:58

10 A. Well, I understand "now you can 14:31:00
11 browse privately and other people who use 14:31:03
12 this device won't see your activity" to 14:31:04
13 both tell me something -- 14:31:07

14 Q. What do they tell you -- 14:31:08

15 A. -- separately. 14:31:14

16 Q. What do they tell you? 14:31:21

17 A. The first one "Now you can 14:31:23
18 browse privately," tells me that my 14:31:25
19 browsing will be private. The other one, 14:31:28
20 the second half "and other people who use 14:31:31
21 this device won't see your activity," 14:31:33
22 tells me that other people who use this 14:31:36
23 device won't see my activity. 14:31:39

24 MR. LEE: You're doing great, 14:31:55
25 just slow down for the court reporter. 14:31:56

1 be in control of what information was 14:39:36
2 collected, told me that the way that I 14:39:39
3 could exercise control was by browsing in 14:39:41
4 Incognito mode. And then while browsing 14:39:44
5 in Incognito mode, they collected the 14:39:47
6 information that they told me I could stop 14:39:49
7 them from collecting, and I think that is 14:39:52
8 a -- yeah, a clear -- like, I asked them 14:39:56
9 not to. Like it's not even -- it's not 14:40:01
10 even a case of not consenting. By opening 14:40:05
11 Incognito, I have explicitly said don't 14:40:11
12 collect the information that you said I 14:40:13
13 could control the collection of by opening 14:40:16
14 Incognito mode. So, yeah, that -- that -- 14:40:18
15 if that information includes IPs, then, 14:40:22
16 yes, collecting that is a violation of 14:40:24
17 that privacy. 14:40:26
18 BY MS. TREBICKA: 14:40:26
19 Q. Do you mean that the word 14:40:37
20 "privately" and "private browsing" means 14:40:41
21 that your Internet browsing activity will 14:40:44
22 be concealed from everyone? 14:40:46
23 A. Well, in the case of Incognito, 14:40:48
24 I'd expect it to be concealed from Google 14:40:49
25 because they told me it was going to be 14:40:52

1	concealed from Google.	14:40:54
2	Q. Just from Google, right? That's	14:40:56
3	your understanding?	14:40:58
4	A. So if we look on the Incognito	14:40:58
5	splash screen or what you called the new	14:41:00
6	tab page, it lists a few entities that the	14:41:04
7	activity may still be visible to. I	14:41:06
8	believe that disclosure, I believe that it	14:41:10
9	could be visible to the websites, to my	14:41:13
10	employer or school if I'm on the employer	14:41:16
11	or school network to the Internet service	14:41:18
12	provider, but it doesn't say Google here.	14:41:21
13	It doesn't say my activity might still be	14:41:24
14	visible to Google. So I understood this	14:41:26
15	as -- and that would have been a great	14:41:29
16	place for Google to put Google. So I	14:41:32
17	understood this is my information not	14:41:36
18	being visible to Google.	14:41:39
19	Q. Do you browse privately on other	14:41:43
20	browsers as well, other than Chrome?	14:41:49
21	A. I -- I couldn't say. Yeah, I	14:41:55
22	don't recall with specificity, but maybe.	14:42:04
23	Q. But your testimony here today is	14:42:15
24	that Google should have been included in	14:42:18
25	this new tab page because why? Why would	14:42:20

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1 other documents; there's that privacy 14:45:39
2 policy that represents that Google is -- 14:45:40
3 that the way for me to control what 14:45:45
4 information is shared is by opening in 14:45:47
5 Incognito mode. So I'm not -- I'm not 14:45:54
6 sure where I would have sort of fallen if 14:45:59
7 for the past more than decade of using 14:46:03
8 Incognito mode the -- the -- the 14:46:09
9 disclosure had been different. I -- I 14:46:12
10 can't say. 14:46:14
11 BY MS. TREBICKA: 14:46:14
12 Q. So your testimony is that even 14:46:30
13 if Google had stated on the new tab page 14:46:32
14 that Google is collecting or may receive 14:46:37
15 information from your private browsing 14:46:41
16 sessions, you still may have been confused 14:46:44
17 as to whether or not Google was collecting 14:46:47
18 this information? 14:46:49
19 MR. LEE: Objection to form, 14:46:51
20 mischaracterizes prior testimony. 14:46:53
21 A. What my attorney said, I -- I 14:46:56
22 wouldn't have necessarily felt I was 14:46:58
23 confused. I don't know what I would have 14:47:00
24 felt. I also don't feel like I am 14:47:03
25 confused now. I feel like I am lied to. 14:47:05

1 previously at minimum. 15:16:59

2 (Exhibit 11, Second Amended 15:17:11

3 Complaint, marked for identification.) 15:17:11

4 BY MS. TREBICKA: 15:17:11

5 Q. We've marked as Exhibit 10 the 15:17:11

6 Second Amended Complaint in this lawsuit. 15:17:17

7 So -- I believe it's Exhibit 10. 15:17:21

8 THE COURT REPORTER: I thought 15:17:26

9 there was a previous Exhibit 10. 15:17:27

10 MS. TREBICKA: Exhibit 11. I 15:17:28

11 apologize. 15:17:34

12 A. I have Exhibit 11 open. 15:17:37

13 BY MS. TREBICKA: 15:17:37

14 Q. Do you recognize this document, 15:17:54

15 Mr. Byatt? 15:17:55

16 A. Yes. 15:17:56

17 Q. What is it? 15:17:56

18 A. It's the second amended 15:17:57

19 complaint in this lawsuit. 15:18:00

20 Q. Have you read it? 15:18:02

21 A. I have. 15:18:03

22 Q. Did you read it before it was 15:18:03

23 filed? 15:18:06

24 A. I did. 15:18:06

25 Q. Did you have any changes to it? 15:18:10

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1	A. I don't recall. That also	15:18:13
2	sounds privileged. I don't know -- it	15:18:16
3	sounds like you're talking about	15:18:17
4	conversations between me and my attorney	15:18:19
5	so I -- I don't know, I -- I don't recall	15:18:22
6	either way.	15:18:24

7 MR. LEE: It's a very good 15:18:25

8 point, Mr. Byatt. Thank you. 15:18:26

9 BY MS. TREBICKA: 15:18:26

10	Q. And I'm certainly not asking	15:18:28
11	about the contents of any communications.	15:18:29
12	It was a different question, but thank you	15:18:32
13	for that.	15:18:34

14	A. Yeah.	15:18:35
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15	Q. That you are attuned to those	15:18:36
16	issues. Let me direct your attention to	15:18:38
17	paragraph 282.	15:18:43

18	A. Do you know what page number	15:18:51
19	just to make my life a little easier?	15:18:52

20	Q. I will give it you in a second.	15:18:54
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21	A. Okay.	15:18:54
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22	Q. You may know before I do. I'm	15:18:58
23	still scrolling.	15:19:01

24	A. Me too. I'm at 147. I'm almost	15:19:02
25	there.	15:19:08

1 Q. Okay. It's -- it's page 73 of 15:19:08
2 the PDF. 15:19:13
3 A. I am looking at paragraph 282. 15:19:14
4 Q. And paragraph 282 says 15:19:21
5 "Plaintiffs and Class members have 15:19:23
6 suffered injury-in-fact, including the 15:19:25
7 loss of money and/or property as a result 15:19:27
8 of Google's unfair and/or unlawful 15:19:29
9 practices"; do you see that? 15:19:33
10 A. I do, yes. 15:19:35
11 Q. And I'm -- for the record, to be 15:19:36
12 clear, I'm not reading the entirety of 15:19:38
13 that sentence or paragraph into the 15:19:40
14 record. Feel free to review it if you 15:19:42
15 need to answer my question, which is: 15:19:45
16 What money did you lose as a result of 15:19:47
17 Google's alleged conduct? 15:19:52
18 A. Google has taken the data, which 15:19:55
19 is my property and also, my -- by running 15:19:58
20 analytics, collecting data, using my 15:20:07
21 computing power and bandwidth, that does, 15:20:10
22 you know, quite literally cost 15:20:13
23 electricity, it is part of the monthly 15:20:16
24 bills I pay for -- for electric and 15:20:21
25 Internet. 15:20:22

1 And Google is using the 15:20:23
2 electricity and transmitting over that 15:20:25
3 Internet without my consent. But also, 15:20:27
4 like I said more directly, they've taken 15:20:31
5 the property, which is my data. 15:20:33

6 Q. So my question was limited to 15:20:36
7 the money portion. We'll get to the 15:20:37
8 property portion as well. 15:20:39

9 But as far as the money portion, 15:20:41
10 is there anything else that you contend is 15:20:43
11 the money that you have lost as a result 15:20:48
12 of Google's alleged conduct in this 15:20:50
13 lawsuit? 15:20:52

14 MR. LEE: Hold on. Let me -- 15:20:54
15 let me just object to the extent this 15:20:55
16 calls for a legal conclusion or an 15:20:59
17 expert opinion. 15:21:00

18 A. So with those direct losses, 15:21:04
19 the -- the electricity and data bandwidth 15:21:08
20 that it has cost me, it's also -- I -- I 15:21:12
21 subscribe to multiple Google services and 15:21:18
22 I'm not sure that I necessarily would have 15:21:25
23 done that if I weren't sort of in the 15:21:29
24 Google product ecosystem with, you know, 15:21:33
25 Chrome as my primary touch point. 15:21:35

1	A. There's the electrical and	15:28:26
2	bandwidth fees associated, which is using	15:28:28
3	a computer and using the Internet.	15:28:31

4	Q. Would you be willing to pay	15:28:36
5	money for a version of Chrome that blocked	15:28:38
6	all ads?	15:28:40

7	A. I would certainly consider it.	15:28:49
8	I think whether I'd be actually willing to	15:28:51
9	require the product actually being offered	15:28:54
10	and, you know, thinking about what	15:28:56
11	alternatives are, but I would not rule it	15:28:57
12	out.	15:29:00

13	Q. You can set that exhibit aside,	15:29:00
14	although in the virtual world, that	15:29:07
15	doesn't work as well as when we are in	15:29:09
16	person. All I meant is I'm done with that	15:29:12
17	exhibit.	15:29:15

18	MS. TREBICKA: We'll mark as	15:29:20
19	Exhibit 12, your May 12, 2021 amended	15:29:21
20	responses and objections to Google's	15:29:36
21	interrogatories number 1, 4 and 5.	15:29:39
22	That's tab 12, Tracy.	15:29:42

23	(Exhibit 12, May 12, 2021	15:29:45
24	Amended Responses and Objections to	15:29:45
25	Google's Interrogatories Number 1, 4	15:29:45

1	and 5, marked for identification.)	15:29:45
2	BY MS. TREBICKA:	15:29:45
3	Q. Mr. Byatt, let me know when	15:30:05
4	you're -- it's up in front of you.	15:30:06
5	A. It is up in front of me.	15:30:07
6	Q. Have you seen this document	15:30:15
7	before?	15:30:16
8	A. Yes, I have.	15:30:18
9	Q. You understand that in the	15:30:18
10	course of this litigation, Google has	15:30:22
11	asked certain questions of you and you	15:30:24
12	have responded to those questions in a	15:30:27
13	formal document?	15:30:29
14	A. Yes.	15:30:30
15	Q. And we call that process	15:30:31
16	interrogatory serving and interrogatory	15:30:35
17	answering process.	15:30:37
18	A. I will take your word for it.	15:30:39
19	Q. Okay. Just wanted you to be	15:30:40
20	aware in case you hadn't encountered those	15:30:42
21	terms before.	15:30:45
22	A. No, I certainly have.	15:30:46
23	Q. Okay, good.	15:30:47
24	So if you could direct your	15:30:49
25	attention to that last page of this	15:30:51

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1 document. 15:30:56

2 A. I am on the last page. 15:30:58

3 Q. I said 11, but I actually meant 15:31:08

4 page 7. So, Mr. Byatt, I correct my 15:31:11

5 direction. Could you please turn to 15:31:15

6 page 7? 15:31:17

7 A. There, yes, I'm on page 7. 15:31:18

8 Q. Do you see the title of that 15:31:21

9 page says Verification? 15:31:22

10 A. I do. 15:31:23

11 Q. And this is your verification 15:31:24

12 that the answers are true and correct; is 15:31:26

13 that right? 15:31:31

14 A. Yes. Well, for the -- just 15:31:32

15 under the rule of completeness, let's 15:31:32

16 finish that sentence. It says that "The 15:31:35

17 answers are true and correct to the best 15:31:36

18 of my knowledge and belief." 15:31:38

19 Q. Do you remember reviewing the 15:31:47

20 answers and making sure that, to the best 15:31:48

21 of your knowledge and belief, they were 15:31:50

22 correct? 15:31:50

23 A. I do, yes. 15:31:59

24 Q. If you could direct your 15:31:59

25 attention to Interrogatory Number 4. This 15:32:00

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1 is on page 3. 15:32:07

2 A. I see Interrogatory Number 4. 15:32:07

3 Q. And the question that we posed 15:32:11

4 there is "Without limitation as to time 15:32:12

5 period, describe with particularity all 15:32:14

6 websites, applications, or other online 15:32:16

7 services with which you voluntarily shared 15:32:19

8 any data at issue." Do you see that? 15:32:22

9 A. I do. 15:32:25

10 Q. And then if you move to the next 15:32:26

11 page, it says Amended Response to 15:32:30

12 Interrogatory Number 4. Do you see that? 15:32:34

13 A. I do. 15:32:37

14 Q. And in the second paragraph, 15:32:37

15 there is a list of questions -- of 15:32:40

16 websites starting with Twitter.com. 15:32:43

17 A. I see this. 15:32:48

18 Q. Do you see that? And is it 15:32:49

19 correct that this is a list of websites 15:32:52

20 that you remember visiting most regardless 15:32:53

21 of whether you were in private mode? 15:32:57

22 A. Well, yes. Those are certainly 15:33:04

23 all websites that I visit a lot. In the 15:33:06

24 period before I answered this, I believe 15:33:13

25 those would have been the websites I 15:33:18

1 visited the most, yes. 15:33:21

2 Q. Has that changed since the 15:33:26

3 period that you responded to this 15:33:27

4 interrogatory? 15:33:30

5 A. I could not say. Yeah, I don't 15:33:31

6 know. Those are all still websites I view 15:33:32

7 a lot. 15:33:35

8 Q. You also state that, to the 15:33:40

9 extent you can recall, just further in the 15:33:43

10 paragraph, during the class period, the 15:33:45

11 applications that you most used include 15:33:47

12 and there's a list of applications. 15:33:50

13 Do you see that? 15:33:53

14 A. I do see that. 15:33:53

15 Q. Has that list changed since the 15:33:54

16 time that you responded to this 15:33:57

17 interrogatory? 15:33:59

18 A. All of those are still 15:34:00

19 applications I use a lot. Pardon me. I 15:34:04

20 could not say if that's still the 15:34:09

21 applications that I use the most, but I do 15:34:14

22 still use all those applications 15:34:19

23 regularly. 15:34:20

24 Q. Are any of these websites, 15:34:22

25 starting with the websites, are there any 15:34:25

1 are listed here? Do you recall 15:38:20
2 interacting specifically with any of the 15:38:25
3 privacy settings for any of these 15:38:28
4 applications? 15:38:29
5 A. Yes. Google Chrome, I interact 15:38:31
6 with that all the time by opening in 15:38:35
7 Incognito mode. 15:38:38
8 Q. Anything else? 15:38:38
9 A. I can't say that I remember with 15:38:39
10 specificity for any of the others. 15:38:44
11 MS. TREBICKA: Let me mark as 15:39:10
12 Exhibit 13 interrogatory response -- 15:39:12
13 oh, I -- I apologize. It's 15:39:24
14 actually -- it's actually the same 15:39:25
15 exhibit. So let me -- okay. So that 15:39:31
16 the record is clear, let me mark as 15:39:36
17 Exhibit 13 interrogatory response to 15:39:39
18 Google's Interrogatory Number 2 on 15:39:47
19 May 6, 2021, and this has Mr. Byatt's 15:39:51
20 verification page -- verification at 15:39:56
21 page 4. So that's tab 17, Tracy. 15:39:59
22 (Exhibit 13, Byatt's Revised 15:40:02
23 Responses to Defendant's Rog 2, marked 15:40:02
24 for identification.) 15:40:02
25 A. So I'm sorry, am I looking for 15:40:05

1 an Exhibit 13 and to open it? 15:40:07

2 BY MS. TREBICKA: 15:40:08

3 Q. It will eventually show up, yes. 15:40:09

4 A. Okay. I have Exhibit 13 open. 15:40:11

5 Q. Do you recognize this document? 15:40:33

6 A. I do, yes. 15:40:33

7 Q. What is this document? 15:40:35

8 A. This is also a document with my 15:40:39

9 response to questions from Google. 15:40:43

10 Q. And if you could direct your 15:40:46

11 attention to page 4, this likewise has a 15:40:49

12 verification or page -- it says page -- 15:40:52

13 it's actually page 3. I apologize. Oh, 15:40:56

14 no, page 4. 15:40:59

15 A. Yes, I see that. 15:41:02

16 Q. So this means that -- is this 15:41:03

17 your signature? 15:41:06

18 A. Yes, it is. 15:41:09

19 Q. And this means that you reviewed 15:41:10

20 and to the best of your knowledge and 15:41:11

21 belief the answers are correct; is that 15:41:13

22 right? 15:41:15

23 A. That is correct. 15:41:16

24 Q. Okay. Let me direct your 15:41:17

25 attention to interrogatory -- to the 15:41:22

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1 actual interrogatory, which is 15:41:27
2 Interrogatory Number 2, and this asks -- 15:41:29
3 this is a rather long interrogatory 15:41:32
4 question, but it asks to -- you to 15:41:34
5 describe with particularity your use of 15:41:37
6 Chrome. Do you see that? 15:41:40
7 A. I do, yes. 15:41:42
8 Q. Now, if you would direct your 15:41:44
9 attention to page 3, in the middle. This 15:41:46
10 is part of your amended response, feel 15:41:53
11 free to scroll through the document, you 15:41:55
12 know, to -- these are not trick questions 15:41:57
13 or anything. I'm just trying to shortcut 15:41:59
14 to the parts that are relevant. The -- 15:42:02
15 the paragraph -- the first full paragraph 15:42:04
16 that starts with notwithstanding and 15:42:06
17 subject to these objections; do you see 15:42:08
18 that? 15:42:10
19 A. I do see that. 15:42:10
20 Q. And it says here that since 15:42:11
21 2016, you have almost exclusively used 15:42:14
22 Chrome on your laptop computers as well as 15:42:16
23 your Android phone; is that right? 15:42:20
24 A. Give me just a moment. Yes. 15:42:22
25 Q. And then further down you list 15:42:31

1 Exhibit 19. 16:13:09

2 (Exhibit 19, Plaintiff William 16:13:11

3 Byatt's Objections and Responses to

4 Defendant's First Set of

5 Interrogatories, marked for

6 identification.)

7 BY MS. TREBICKA:

8 Q. Just let me know when you're 16:13:12

9 there. 16:13:13

10 A. I have Exhibit 19. 16:13:19

11 Q. Okay. This is another amended 16:13:20

12 response and objection to Google's First 16:13:25

13 Set of Interrogatories, numbers 1 16:13:29

14 through 6, and it's dated January 11, 16:13:30

15 2021; do you recognize this document? 16:13:34

16 A. Yes, I do. 16:13:36

17 Q. What is it? 16:13:37

18 A. It is exactly what you said. It 16:13:39

19 is my answers and I -- I guess counsel's 16:13:40

20 objections to questions from Google. 16:13:46

21 Q. Okay. And is this -- before 16:13:50

22 this document was served on January 11, 16:13:53

23 2021, did you review to make sure that it 16:13:56

24 was complete and accurate to the best of 16:13:58

25 your knowledge and belief? 16:14:01

1 A. To the best of my knowledge and 16:14:03
2 belief, yes. 16:14:04

3	MS. TREBICKA: I believe we do	16:14:09
4	not have the verification for this	16:14:10
5	amended inter- -- or response and	16:14:14
6	objection or maybe it has arrived	16:14:16
7	today and I've been in this deposition	16:14:18
8	so I haven't seen it, but I trust that	16:14:20
9	we will receive it shortly, Counsel.	16:14:23

10	Okay. We will mark next as	16:14:34
11	Exhibit 20, your amended responses and	16:14:35
12	objections to Google's second set of	16:14:41
13	interrogatories, number 7 to 10 and	16:14:43
14	these are dated June 1, 2021.	16:14:46

15	(Exhibit 20, Plaintiff William	16:14:48
16	Byatt's Amended Objections and	16:14:48
17	Responses to Defendant's Second Set of	16:14:48
18	Interrogatories, marked for	16:14:48
19	identification.)	16:14:51

20 MR. LEE: Hold on. Just give us 16:14:51

21 a chance to load it. 16:14:52

22	MS. TREBICKA: Yep.	16:14:53
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23	A. I have it open.	16:15:08
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24 BY MS. TREBICKA: 16:15:08

25	Q. Do you recognize this document?	16:15:09
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1 A. Give me just a moment, please. 16:15:11
2 Yeah, I do. 16:15:13
3 Q. And what is this document? 16:15:14
4 A. Same thing as the others. It is 16:15:17
5 my responses to some questions from 16:15:19
6 Google. 16:15:24
7 Q. Okay. 16:15:25
8 MS. TREBICKA: And same note as 16:15:30
9 to this amended response and 16:15:33
10 objection, we have not yet received 16:15:37
11 Mr. Byatt's verification. We trust it 16:15:39
12 will come shortly. 16:15:43
13 BY MS. TREBICKA: 16:15:45
14 Q. But, Mr. Byatt, did you review 16:15:45
15 to make sure that it is -- the responses, 16:15:46
16 that they are, to the best of your 16:15:49
17 understanding and belief? 16:15:52
18 A. When I got this document, I did 16:15:54
19 do that. Let me -- give me just a moment 16:15:58
20 to check and make sure that this is what I 16:16:02
21 remember reviewing. 16:16:04
22 Yeah, this looks right, as best 16:16:29
23 as I can remember. 16:16:33
24 Q. You're aware of companies like 16:16:36
25 Killi or Brave; is that right? 16:16:40

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1 the information -- my browsing information 16:20:20
2 when I'm in Incognito mode is information 16:20:25
3 that it is more valuable to me for it to 16:20:28
4 remain private, right, yeah. So I don't 16:20:32
5 know how Google values it, but for me it 16:20:37
6 is certainly -- the highest value is for 16:20:40
7 it to be private when I'm in Incognito 16:20:42
8 mode. 16:20:42

9 BY MS. TREBICKA: 16:20:42

10 Q. What about value to others -- 16:20:56
11 and actually, let me -- why don't you take 16:20:59
12 a look at the response to Interrogatory 10 16:21:01
13 in this exhibit that you have open, which 16:21:05
14 is on page 7. 16:21:09

15 A. I'm on page 7. 16:21:20

16 Q. Okay. And I'm focusing your 16:21:22
17 attention to the last paragraph on that 16:21:23
18 page, the one that starts with 16:21:24
19 "Notwithstanding and subject to these 16:21:26
20 objections"; do you see that? 16:21:28

21 A. I see that paragraph. 16:21:32

22 Q. And you said "Plaintiff Byatt 16:21:33
23 responds that he has been aware of the 16:21:35
24 value of his personal data for years and 16:21:36
25 he chose to browse privately to protect 16:21:38

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1 that personal data from Google and other 16:21:41
2 tech company's collection for their own 16:21:44
3 benefit and profit"; do you see that? 16:21:46
4 A. I do. 16:21:48
5 Q. Is that a correct statement? 16:21:49
6 A. Yes, that seems correct to me. 16:21:51
7 Q. And skipping over the -- or 16:21:57
8 actually, just continuing -- continuing on 16:21:59
9 with your answer, it says "Plaintiff Byatt 16:22:01
10 cannot recall specifically when he learned 16:22:04
11 of websites like Killi, but he knew about 16:22:06
12 companies like Brave and others that 16:22:09
13 provide monetary compensation for personal 16:22:12
14 data before filing this lawsuit. To the 16:22:14
15 best of Plaintiff Byatt's recollection, he 16:22:18
16 cannot recall attempting to sell his 16:22:20
17 personal data, but because Plaintiff Byatt 16:22:23
18 could sell his personal data to websites 16:22:26
19 like Killi and similar websites, the 16:22:29
20 personal data that Google has unlawfully 16:22:31
21 intercepted while Plaintiff Byatt was in 16:22:34
22 private browsing mode has inherent value 16:22:37
23 and Google unlawfully collected that 16:22:40
24 personal data without providing 16:22:42
25 compensation to Plaintiff Byatt."

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1 that generally. 16:25:31

2 Q. Tell me how it would be context 16:25:31

3 dependent, and I'm speaking here about 16:25:34

4 browsing in Incognito specifically. 16:25:36

5 A. Well, I'm not -- much like the 16:25:38

6 other context-based answers from earlier, 16:25:40

7 I don't have a valuation algorithm in my 16:25:46

8 head, but, depending on what my behavior 16:25:52

9 looks like, what I've done, those values 16:26:03

10 could look different in ways I can't 16:26:07

11 necessarily just predict, sitting here. 16:26:12

12 But there are certainly going to 16:26:15

13 be some referrers that are going to be 16:26:20

14 more valuable to me. There are going to 16:26:23

15 be some IPs that are more valuable to me. 16:26:28

16 I think it will depend a lot on -- on too 16:26:31

17 many details to be able to enumerate. 16:26:35

18 Q. If Google were to pay for your 16:26:39

19 data, do you agree that it could use it 16:26:45

20 including for advertising? 16:26:48

21 MR. LEE: Objection to form, 16:26:51

22 incomplete hypothetical. 16:26:53

23 A. Yeah, so if Google were to pay 16:26:56

24 and fully disclose what they were doing 16:27:03

25 and obtain my consent, that's a lot of 16:27:09

1 ifs, then sure, yeah. 16:27:15

2 MS. TREBICKA: Let me mark as 16:27:25

3 the next exhibit, which is Exhibit 21, 16:27:27

4 your responses and objections to 16:27:30

5 Google's third set of interrogatories 16:27:33

6 number 11. 16:27:36

7 MR. LEE: Can we just get a time 16:27:39

8 check as to how long we've been on the 16:27:40

9 record before we get into the 16:27:42

10 document? 16:27:45

11 THE VIDEOGRAPHER: Hour 20. 16:27:46

12 MR. LEE: Hour 20. Do you mind 16:27:48

13 if we take a break? We can do it 16:27:51

14 after this document, Viola, if that's 16:27:52

15 better for you, but should be -- 16:27:52

16 MS. TREBICKA: I'm literally 16:27:54

17 just going to put it into the record. 16:27:56

18 MR. LEE: Okay. 16:27:57

19 MS. TREBICKA: So -- okay. 16:27:59

20 Let's -- I'll do it quickly. 16:27:59

21 (Exhibit 21, Plaintiff William 16:28:01

22 Byatt's Verified Objections and

23 Response to Defendant's Third Set of

24 Interrogatories (No. 11), marked for

25 identification.)

1 BY MS. TREBICKA:

2 Q. So, Mr. Byatt, this is 16:28:02

3 Exhibit 21. Tell me when it's in front of 16:28:03

4 you. 16:28:07

5 A. Exhibit 21 is what I'm looking 16:28:07

6 for? 16:28:09

7 Q. Correct. 16:28:09

8 A. I have Exhibit 21 open. 16:28:10

9 Q. And this is -- do you remember 16:28:12

10 this document? Do you recall reviewing 16:28:14

11 it? 16:28:16

12 MR. LEE: You have to answer 16:28:19

13 audibly. 16:28:20

14 THE WITNESS: I'm checking it. 16:28:21

15 MR. LEE: Oh, okay. 16:28:22

16 A. This looks right. Yeah, this 16:28:24

17 looks familiar, I have -- I have reviewed 16:28:26

18 this. 16:28:28

19 BY MS. TREBICKA: 16:28:28

20 Q. Okay. And do you have any 16:28:28

21 reason to believe that this is not 16:28:32

22 complete and correct, of course, you know, 16:28:34

23 subject to your understanding and the 16:28:41

24 knowledge that you currently have? 16:28:42

25 A. Right, yeah, to the best of my 16:28:46

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1 knowledge and ability, this seems correct. 16:28:47

2 Q. Okay. Great. 16:28:51

3 MS. TREBICKA: We can get off 16:28:52

4 the record now if you'd like. 16:28:53

5 MR. LEE: Yep, let's take a 16:28:56

6 ten-minute break. 16:28:58

7 MS. TREBICKA: Sounds good. 16:28:59

8 THE VIDEOGRAPHER: All right. 16:29:00

9 Going off the record. The time is 16:29:01

10 4:28 p.m. 16:29:03

11 (Whereupon, a brief recess is 16:29:18

12 taken.) 16:39:11

13 THE VIDEOGRAPHER: Back on the 16:39:11

14 record. The time is 4:39 p.m. 16:39:22

15 BY MS. TREBICKA: 16:39:22

16 Q. Mr. Byatt, we've marked as 16:39:33

17 Exhibit 22, your July 30, 2021 responses 16:39:35

18 and objections to Google's fourth set of 16:39:43

19 interrogatories. 16:39:47

20 (Exhibit 22, Plaintiff William 16:39:47

21 Byatt's Objections and Responses to

22 Defendant's Fourth Set of

23 Interrogatories (Nos. 12-15), marked

24 for identification.)

25 BY MS. TREBICKA:

1 Q. And it's numbers 12 through 15; 16:39:50
2 do you see that? 16:39:52
3 A. I do see it. 16:39:53
4 Q. Do you recognize this document? 16:39:54
5 A. I do. 16:39:56
6 Q. Did you review the responses in 16:39:57
7 this document before it was served? 16:40:01
8 A. I did, yes. 16:40:02
9 Q. And is -- are they accurate to 16:40:04
10 the best of your knowledge and belief? 16:40:07
11 A. Yes. 16:40:11
12 Q. And response to Interrogatory 16:40:11
13 Number 13, which is on page 3, the second 16:40:18
14 full paragraph in the response, but the 16:40:24
15 one that starts with "notwithstanding and 16:40:28
16 subject to these objections"; do you see 16:40:30
17 that? 16:40:32
18 A. I do, yes. 16:40:32
19 Q. And you list here, certain 16:40:34
20 Google services that you pay for; do you 16:40:35
21 see that? 16:40:40
22 A. I do, yes. 16:40:40
23 Q. Do you continue to pay for these 16:40:42
24 Google services? 16:40:44
25 A. I believe so, yes. 16:40:47

1 Q. So you haven't discontinued the 16:40:49
2 use of any of these services; is that 16:40:50
3 right? 16:40:52

4 A. Not that I recall. 16:40:53

5 Q. Okay. 16:40:59

6 MS. TREBICKA: We'll mark as 16:41:00
7 Exhibit 23 another interrogatory 16:41:01
8 response. This one is the verified 16:41:10
9 objections and responses to Google's 16:41:17
10 fifth set of interrogatories, 16:41:20
11 number 16. 16:41:22

12 (Exhibit 23, Plaintiff William 16:41:25
13 Byatt's Verified Objections and
14 Responses to Defendant's Fifth Set of
15 Interrogatories (No. 16), marked for
16 identification.)

17 BY MS. TREBICKA:

18 Q. Do you see that? 16:41:26

19 A. I do. 16:41:26

20 Q. Did you review this before it 16:41:26
21 was served to confirm that it was accurate 16:41:28
22 and complete to the best of your knowledge 16:41:31
23 and belief? 16:41:33

24 A. Yes, I did. And I -- I did 16:41:33
25 review it and I -- I do confirm that it's 16:41:36

1 accurate, to the best of my knowledge and 16:41:39
2 belief. 16:41:40

3 Q. Okay. 16:41:40

4 MS. TREBICKA: And this actually 16:41:41
5 says "verified objections and 16:41:42
6 responses," but the verification, I 16:41:44
7 understand was not received with this 16:41:47
8 document. I -- I understand it's been 16:41:49
9 received today and we will put it into 16:41:52
10 the record. I just wanted the record 16:41:54
11 to be clear. 16:41:57

12 BY MS. TREBICKA: 16:41:57

13 Q. If you could take a look at 16:42:09
14 interrogatory 16, the answer to 16:42:11
15 interrogatory 16 that -- in the middle of 16:42:13
16 page 2, lines -- between lines 15 and 16, 16:42:15
17 the paragraph that starts with "Google has 16:42:22
18 demonstrated a willingness"; do you see 16:42:23
19 that? 16:42:27

20 A. I do. 16:42:27

21 Q. Do you see that this 16:42:28
22 paragraph -- and take your time to 16:42:29
23 review -- but this paragraph and the next 16:42:31
24 have certain examples of data that -- I'm 16:42:34
25 sorry -- have certain examples of consumer 16:42:40

1 research companies or other companies that 16:42:43
2 you contend demonstrate a willingness to 16:42:45
3 pay consumers; is that right, as a general 16:42:48
4 matter? 16:42:50

5 A. Yes, I see that, and -- and it 16:42:51
6 says that. 16:42:53

7 Q. And were you aware of these 16:42:54
8 consumer research companies before this 16:42:58
9 litigation? 16:43:01

10 A. I couldn't say exactly when I 16:43:04
11 became aware of them specifically. I was 16:43:07
12 aware that, you know, paid consumer 16:43:09
13 research exists. I -- yeah. So I would 16:43:13
14 say generally, I was aware of -- of the 16:43:22
15 existence of companies like this. I 16:43:25
16 cannot say specifically when I became 16:43:27
17 aware of the names of individual 16:43:29
18 companies. 16:43:32

19 Q. Have you ever tried to sell your 16:43:33
20 data to any of these companies listed 16:43:34
21 here? 16:43:37

22 A. I have done paid consumer 16:43:38
23 research, but a very long time ago and not 16:43:45
24 in relation to Google. 16:43:48

25 Q. What do you recall about that? 16:43:51

1 mark it, I'll move on to something 16:50:38
2 else. Thank you, Tracy. I jumped the 16:50:40
3 gun. 16:50:43
4 BY MS. TREBICKA: 16:50:43
5 Q. What has been marked as 16:50:50
6 Exhibit 24 is your amended objections and 16:50:51
7 responses to defendant's second set of 16:50:56
8 requests for admission; do you see that? 16:51:00
9 A. I do see this. 16:51:03
10 Q. Okay. And do you understand 16:51:05
11 what requests for admission are? 16:51:06
12 A. I would imagine that there is 16:51:11
13 some specific legal meaning of that that I 16:51:15
14 am not familiar with, but in a sort of 16:51:20
15 colloquial sense, yes. And I can, you 16:51:23
16 know, read the questions on here and 16:51:27
17 understand what they're asking. 16:51:29
18 Q. Have you seen this document 16:51:32
19 before? 16:51:34
20 A. Yes, I have. 16:51:34
21 Q. You have, okay. Good and feel 16:51:35
22 free to familiarize yourself with it and I 16:51:38
23 will be asking questions about -- 16:51:41
24 specifically, RFA number 6, 7 and 15, 16:51:44
25 because I realize it's a long document. 16:51:55

1	A.	6, 7 and which?	16:51:55
2	Q.	15.	16:51:57
3	A.	15. Okay. I have reviewed the	16:51:58
4		document.	16:52:07
5	Q.	Okay. So with respect to a	16:52:08
6		request for admission number 6, which is	16:52:11
7		on page 7, are you there?	16:52:13
8	A.	I'm scrolling back up. I am	16:52:16
9		there now, yes.	16:52:20
10	Q.	This request for admission asks	16:52:21
11		"Admit that each Google privacy policy you	16:52:24
12		reviewed disclosed that Google collects	16:52:26
13		information about users' visits to	16:52:28
14		websites that use Google's services"; do	16:52:31
15		you see that?	16:52:33
16	A.	I do see that.	16:52:33
17	Q.	And then the response says	16:52:34
18		"Denied." Do you see that?	16:52:37
19	A.	I do, yes.	16:52:38
20	Q.	What's the basis for this	16:52:39
21		response?	16:52:42
22	A.	That the privacy policies did	16:52:44
23		not disclose that Google ignores	16:52:50
24		everything it has told me about Incognito	16:52:55
25		mode when I go to other websites that use	16:52:58

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1 Google from collecting the information 16:55:20
2 that you allege Google illegally 16:55:21
3 'intercepted'; do you see that? 16:55:24
4 A. I do see that. 16:55:25
5 Q. And do you see that the response 16:55:26
6 is "Denied"? 16:55:28
7 A. I do. 16:55:29
8 Q. What's the basis for that 16:55:29
9 denial? 16:55:31
10 A. The fact that the Incognito 16:55:32
11 notice does represent that Incognito mode 16:55:33
12 prevents Google from collecting the 16:55:37
13 information. 16:55:38
14 Q. How does it -- how does it 16:55:39
15 represent it? 16:55:42
16 A. The words, it says that I can 16:55:43
17 browse privately. It's got a little 16:55:46
18 spy-looking dude that suggests privacy as 16:55:49
19 well. It says that my behavior may be 16:55:52
20 visible to certain websites, but they 16:55:57
21 don't say to them or to certain entities, 16:55:58
22 but they don't say to them, yeah, I think 16:56:02
23 we've gone over pretty clearly how the 16:56:04
24 Incognito notice led me to believe that 16:56:07
25 Incognito mode would prevent Google from 16:56:11

1 collecting the information that Google 16:56:13
2 illegally intercepts. 16:56:14

3 Q. And you would agree that the 16:56:16
4 Incognito notice does not mention the word 16:56:20
5 Google in it, correct? 16:56:21

6 A. Well, the Incognito notice says 16:56:25
7 Chrome and it's in a Google product, but 16:56:27
8 I'm not aware of it having the word Google 16:56:30
9 in it, sure. 16:56:32

10 Q. We can set that aside. 16:56:46

11 MS. TREBICKA: We have now 16:56:49
12 uploaded as marked Exhibits 25 through 16:56:50
13 28, the verifications we received 16:56:59
14 today, Mr. Byatt. 16:57:02

15 (Exhibits 25 through 28 16:57:02
16 withdrawn from the record per 16:57:02
17 counsel's agreement.) 16:57:02

18 BY MS. TREBICKA: 16:57:02

19 Q. We can go through them quickly, 16:57:07
20 I would just like you -- I would just like 16:57:07
21 to put them in the record, but Exhibit 25 16:57:07
22 is a verification that declares under the 16:57:10
23 penalty of perjury that you have read the 16:57:13
24 foregoing answers and interrogatories and 16:57:15
25 that they are true and correct to the best 16:57:18

1 of your knowledge and belief; do you see 16:57:20
2 that? 16:57:22
3 A. I do see that. 16:57:22
4 Q. And this -- do you recall 16:57:23
5 preparing or signing this verification? 16:57:27
6 A. Yeah, so remind me which 16:57:34
7 document is this for, which responses? 16:57:35
8 Q. This is -- that's a very good 16:57:38
9 question. And I will have to -- actually, 16:57:40
10 why don't we do this: I'm going to skip 16:57:46
11 over these right now, and when we get back 16:57:50
12 on the record, we will have it matched. I 16:57:52
13 thought they were matched but they're not, 16:57:55
14 so we'll match it to the particular 16:57:57
15 exhibits that you looked at earlier. 16:57:59
16 A. The title in Exhibit Share does 16:58:00
17 say first set for that, second set for the 16:58:03
18 next one, et cetera. I don't know if 16:58:05
19 that's helpful. 16:58:07
20 Q. It probably is, but I'd like to 16:58:07
21 be more exact because there's also been 16:58:11
22 amended responses. 16:58:12
23 A. Sure. 16:58:13
24 Q. So why don't you -- 16:58:14
25 MS. TREBICKA: Well, Tracy, I 16:58:15

1 VIOLA TREBICKA, ESQ.

2 violatrebicka@quinnemanuel.com

3 December 23, 2021

4 RE: BROWN VS. GOOGLE LLC

5 DECEMBER 20, 2021, WILLIAM BYATT, JOB NO. 5001125

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
11 a Veritext office.

12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
13 Transcript - The witness should review the transcript and
14 make any necessary corrections on the errata pages included
15 below, notating the page and line number of the corrections.
16 The witness should then sign and date the errata and penalty
17 of perjury pages and return the completed pages to all
18 appearing counsel within the period of time determined at
19 the deposition or provided by the Code of Civil Procedure.

20 ___ Waiving the CA Code of Civil Procedure per Stipulation of
21 Counsel - Original transcript to be released for signature
22 as determined at the deposition.

23 ___ Signature Waived - Reading & Signature was waived at the
24 time of the deposition.

25

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1 ___ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF
2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.
9 _X_Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

1 RE: BROWN VS. GOOGLE LLC

2 WILLIAM BYATT, JOB NO. 5001125

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

8 _____

9 REASON_____

10 PAGE_____ LINE_____ CHANGE_____

11 _____

12 REASON_____

13 PAGE_____ LINE_____ CHANGE_____

14 _____

15 REASON_____

16 PAGE_____ LINE_____ CHANGE_____

17 _____

18 REASON_____

19 PAGE_____ LINE_____ CHANGE_____

20 _____

21 REASON_____

22 _____

23 _____

24 WITNESS _____ Date _____

25 _____